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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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11/30/2004

Markus Bischof

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COHEN, PONTANI, LIEBERMAN & PAVANE

551 FIFTH AVENUE

SUITE 1210

NEW YORK, NY 10176

EXAMINER

SPAHN, GAY

ART UNIT

PAPER NUMBER

3635

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/517,397	BISCHOF, MARKUS	
	<b>Examiner</b>	<b>Art Unit</b>	
	Gay Ann Spahn	3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 7-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 November 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>30 November 2004</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Priority***

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on 30 November 2004 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement has been considered by the examiner.

However, the examiner notes that the one item of information listed in the "Foreign Patent Documents" section has been lined through as not being considered by the examiner for failing to comply with 37 C.F.R. § 1.98(a)(2)(i) because no copy of the foreign document was provided to the Office.

### ***Drawings***

The subject matter of this application admits of illustration by a drawing to facilitate understanding of the invention. Applicant is required to furnish a drawing under 37 CFR 1.81(c). No new matter may be introduced in the required drawing. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d).

The examiner notes that Applicant is claiming “A dividing wall comprising: a wall element . . .; a closure element . . .; switching apparatus . . . comprising a first sensor . . . and a second sensor.” No dividing wall has been illustrated in the drawings (i.e., the examiner notes that Fig. 5 which does illustrate a dividing wall is a prior art figure).

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the:

(1) dividing wall comprising: a wall element . . .; a closure element . . .; and switching apparatus . . . comprising a first sensor . . .; and a second sensor . . .” (as specifically recited in claim 7, and

(2) “first reversible motor . . .; and a second reversible motor” as specifically recited in claim 8,

must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for

consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

The disclosure is objected to because of the following informalities:

(1) paragraph no. [0001], line 3, the specification cannot refer to claims by number as claim numbering may change during prosecution.

Appropriate correction is required.

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

Since many examiners use the title of the invention for searching purposes, the examiner suggests that Applicants amend the title of the invention to one that is clearly indicative of the patentable feature of the invention. However, should Applicants choose not to amend the title of the invention, the examiner will amend the title of the invention at the time of allowance, if any (pursuant to the Manual of Patent Examining Procedure (MPEP) § 606.01, wherein it states that "[i]f a satisfactory title is not supplied

by the applicant, the examiner may, at the time of allowance, change the title by examiner's amendment.").

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 7-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

**Claim 7**, line 4, the recitation of "a closure element associated with said wall element" is vague, indefinite, and confusing because it is not understood how the closure element is "associated with" the wall element. Is the closure element connected to the wall element?

**Claim 7**, lines 4-5, the recitation that "said closure element can be driven between a closed position and an open position by applying a voltage" is vague, indefinite, and confusing because it is not known whether the closure element "is" driven between the closed and open positions or not. Further, "a closed position and an open position" is vague, indefinite, and confusing as lacking antecedent basis because it is not known if this closed and open position is referring back to or is different from the "closed position" and the "open position" introduced in lines 2-3.

**Claim 7**, lines 6-7, the recitation of “a switching apparatus for switching the voltage to move the closure element to the closed position” is vague, indefinite, and confusing it is not understood how the voltage is switch or to what.

**Claim 9**, lines 2-3, the recitation of “a first voltage supply connection which can be switched between a first connection of the first motor and a first connection of the second motor” is vague, indefinite, and confusing because it is not clear if the first voltage supply connection “is” switched.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 7 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by HOLLANDS (U.S. Patent No. 3,126,048).**

**As to claim 7** (and as best understood despite the 35 U.S.C. § 112, second paragraph indefiniteness discussed above), HOLLANDS discloses a dividing wall comprising:

a wall element (10) “which can be driven between a closed position and an open position by a voltage” (the structure of HOLLANDS is capable of performing the recited intended use within quotation marks);

a closure element (31) associated with said wall element (10), wherein said closure element (31) “can be driven between a closed position and an open position by applying a voltage” (the structure of HOLLANDS is capable of performing the recited intended use within quotation marks); and

a switching apparatus (63) “for switching the voltage to move the closure element to the closed position after the wall element has reached the closed position, and for switching the voltage to move the closure element to the open position before the wall element exits the closed position” (the structure of HOLLANDS is capable of performing the recited intended use within quotation marks), said switching apparatus comprising

a first sensor (62) “for determining when the wall element has reached the closed position” (the structure of HOLLANDS is capable of performing the recited intended use within quotation marks); and

a second sensor “for determining when the closure element has reached the open position” (the structure of HOLLANDS is capable of performing the recited intended use within quotation marks).

**As to claim 8** (and as best understood despite the 35 U.S.C. § 112, second paragraph indefiniteness discussed above), HOLLANDS discloses the dividing wall of claim 7 as discussed above, and HOLLANDS also discloses a first reversible motor (M) “for driving the wall element” (the structure of HOLLANDS is capable of performing the recited intended use within quotation marks); and a second reversible motor (40) “for driving the closure element” (the structure of HOLLANDS is capable of performing the recited intended use within quotation marks), wherein the switching apparatus “switches



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the voltage from the first motor to the second motor to move the closure element to the closed position after the wall element reaches the closed position, and to move the closure element to the open position before the wall element exits the closed position” (the structure of HOLLANDS is capable of performing the recited intended use within quotation marks).

**Claim 7 is rejected under 35 U.S.C. 102(b) as being anticipated by OWENS (U.S. Patent No. 5,339,881).**

**As to claim 7** (and as best understood despite the 35 U.S.C. § 112, second paragraph indefiniteness discussed above), OWENS discloses a dividing wall comprising:

a wall element (22) “which can be driven between a closed position and an open position by a voltage” (the structure of OWENS is capable of performing the recited intended use within quotation marks);

a closure element (40) associated with said wall element (22), wherein said closure element 40) “can be driven between a closed position and an open position by applying a voltage” (the structure of OWENS is capable of performing the recited intended use within quotation marks);

a switching apparatus (66) “for switching the voltage to move the closure element to the closed position after the wall element has reached the closed position, and for switching the voltage to move the closure element to the open position before the wall

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element exits the closed position” (the structure of OWENS is capable of performing the recited intended use within quotation marks), said switching apparatus comprising

a first sensor (120) “for determining when the wall element has reached the closed position” (the structure of OWENS is capable of performing the recited intended use within quotation marks); and

a second sensor (76) “for determining when the closure element has reached the open position” (the structure of OWENS is capable of performing the recited intended use within quotation marks).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 7-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's Admitted Prior Art in Fig. 5 and paragraph no. [0003] (hereinafter referred to as “APPLICANT’S ADMITTED PRIOR ART”) in view of KALENDER (U.S. Patent No. 7,023,151).**

**As to claim 7** (and as best understood despite the 35 U.S.C. § 112, second paragraph indefiniteness discussed above), APPLICANT’S ADMITTED PRIOR ART discloses a dividing wall comprising:

a wall element (1) “which can be driven between a closed position and an open position by a voltage” (the structure of X is capable of performing the recited intended use within quotation marks);

a closure element (5) associated with said wall element (1), wherein said closure element (5) “can be driven between a closed position and an open position by applying a voltage” (the structure of X is capable of performing the recited intended use within quotation marks).

APPLICANT’S ADMITTED PRIOR ART fails to explicitly disclose a switching apparatus “for switching the voltage to move the closure element to the closed position after the wall element has reached the closed position, and for switching the voltage to move the closure element to the open position before the wall element exits the closed position” (the structure of X is capable of performing the recited intended use within quotation marks), said switching apparatus comprising a first sensor “for determining when the wall element has reached the closed position” (the structure of X is capable of performing the recited intended use within quotation marks); and a second sensor “for determining when the closure element has reached the open position” (the structure of X is capable of performing the recited intended use within quotation marks).

KALENDER discloses a switching apparatus (any of embodiments shown in Fig. 1, Fig. 2, and Fig. 3) “for switching the voltage to move the closure element to the closed position after the wall element has reached the closed position, and for switching the voltage to move the closure element to the open position before the wall element exits the closed position” (the structure of KALENDER is capable of performing the

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recited intended use within quotation marks), said switching apparatus comprising a first sensor (R) “for determining when the wall element has reached the closed position” (the structure of KALENDER is capable of performing the recited intended use within quotation marks); and a second sensor (R) “for determining when the closure element has reached the open position” (the structure of KALENDER is capable of performing the recited intended use within quotation marks).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the dividing wall of APPLICANT'S ADMITTED PRIOR ART by including a switching apparatus having first and second sensors as taught by KALENDER in order to simplify the construction and cost of operating several motors sequentially.

**As to claim 8** (and as best understood despite the 35 U.S.C. § 112, second paragraph indefiniteness discussed above), APPLICANT'S ADMITTED PRIOR ART in view of KALENDER discloses the dividing wall of claim 7 as discussed above, and KALENDER also discloses a first reversible motor (M) “for driving the wall element” (the structure of KALENDER is capable of performing the recited intended use within quotation marks); and a second reversible motor (M) “for driving the closure element” (the structure of KALENDER is capable of performing the recited intended use within quotation marks), wherein the switching apparatus “switches the voltage from the first motor to the second motor to move the closure element to the closed position after the wall element reaches the closed position, and to move the closure element to the open

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position before the wall element exits the closed position” (the structure of KALENDER is capable of performing the recited intended use within quotation marks).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gay Ann Spahn whose telephone number is (571)-272-7731. The examiner can normally be reached on Monday through Friday, 10:30 am to 7:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard E. Chilcot can be reached on (571)-272-6777. The fax phone number for the organization where this application or proceeding is assigned is (571)-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gay Ann Spahn/  
Gay Ann Spahn, Patent Examiner  
April 12, 2008